IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2444 OF 1997

WITH

CIVIL APPLICATION NO.1682 OF 2004

Sudhakar S/o Purushottam Chapalgaonkar,
13, Jainagar, New Usmanpura,
Aurangabad Pin 431 005. ... ... Petitioner

Versus

1. The State of Maharashtra
(Copy to be served on the Govt.
Pleader, High Court of Mumbai)

2. The High Court of Judicature
at Bombay through its Registrar,
High Court, Appellate Side,
Mumbai. ... ... Respondents

Mr.K.S.Bapat for Petitioner.

Mr.A.P. Vanarse, AGP for Respondents.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.
DATED : 30th September 2004

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard the learned Counsel for the parties. The Petitioner herein was a Judicial Officer in the State of Maharashtra. He joined the judicial services on 23rd February 1976 as a Civil Judge, Junior Division and Judicial Magistrate, First Class and was subsequently confirmed on 26th October 1978. He earned his promotions from time

to time. The Petitioner was promoted as an Additional District Judge in September 1988. He has been compulsorily retired by the order passed by the State Government on 10th July 1996 in public interest under Rule 10(4) (a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982. Since the Petitioner was in the judicial service, the State Government has arrived at this decision on the recommendation of the High Court. It is this decision which is under challenge in this Petition.

2. The Petition was admitted on 21st July 1997 but did not reach for final hearing for quite some time. The Petitioner reached his normal age of superannuation in May 2003. He, therefore, filed a Civil Application bearing No.1682 of 2004 on 8th July 2004 wherein he prayed that the order of compulsory retirement be withdrawn and he be permitted to retire voluntarily. After this Civil Application was filed, a Division Bench, which heard the matter at that time, sought remarks of the High Court on the Administrative side and we are told that the Hon’ble the Chief Justice and the Administrative Judges have left it to the Judges on the Judicial side to decide the Application.

3. Mr.Bapat, learned Counsel appearing for the Petitioner, has pointed out that apart from a few minor deficiencies, the entire service record of the Petitioner was by and large clean. It is submitted that, for the first time for the year 1991-92, the Petitioner was served with the adverse remarks on 15th September 1994. The adverse remarks, which were communicated to the Petitioner, were as follows:-

> " He was in-charge of Cash and Finance Branch. But this work was withdrawn since he was negligent.
>
> Behaviour with members of the staff, with members of the Bar and with litigants, members of public and officers and employees of the other departments not good. "

This was when the Petitioner was working in District Parbhani. Mr.Bapat, however, points out that though these are the adverse remarks of the year 1991-92, in December 1992, the Petitioner was promoted as a full-fleged District Judge. The other deficiency appearing on record is that in the year 1996 a minor punishment was imposed on the Petitioner by withholding his future

increments for a period of two years. That was on the ground of inadequate disposal. Mr.Bapat submits that except these two deficiencies, there are no other deficiencies in the Petitioner's service span of over 20 years and, therefore, the Respondents ought not to have resorted to the decision of compulsory retirement.

4. Mr.Vanarase, learned Assistant Government Pleader appearing for the Respondents, has taken instructions and as far as these two statements made in the Civil Application as well as the material placed by Mr.Bapat are concerned, he has accepted that these are the two deficiencies in the service record of the Petitioner and nothing is adverse beyond it. It is only because of this fact that the Hon'ble Chief Justice and the Administrative Judges have left it to the Judges on the Judicial side to pass appropriate orders.

5. Mr.Bapat has drawn our attention to the fact that on receiving the order of compulsory retirement, the Petitioner had himself made an application that he be allowed to retire voluntarily. He had made such an application for review of the decision dated 10th July 1996 by moving the application to the Registrar on 16th July 1996 and he followed that by further reminder

of 27th July 1996.

6. Now, as far as the aspect of compulsory retirement is concerned, if this decision is arrived at in public interest, to remove the dead wood normally, the High Court is not expected to interfere therein, unless the order is unreasonable, arbitrary or totally unjustified. This is because, if a decision is arrived at in public interest not to continue a particular officer, such a decision should not be substituted and interfered. In the present case, however, the decision having been arrived at, the officer concerned viz. the Petitioner himself had opted to retire voluntarily. It is, therefore, submitted that if the Respondents did not want the Petitioner to continue in service, he was ready to retire voluntarily. That would have served the public interest which the administration wanted to attain and at the same time, it would not have caused any further prejudice to the Petitioner, who is otherwise going to lose almost one-third pension and other benefits on account of compulsory retirement. Mr.Bapat, therefore, submits that the Review Application of the Petitioner ought to have been entertained at that time itself.

7. Mr.Bapat has also drawn our attention to the order passed by another Division Bench (to which one of us Smt.Mhatre, J. was a Member) in Writ Petition No.2908 of 1997 in the case of another Judicial Officer S.D. Dharmadhikari vs. The State of Maharashtra & anr. That was a case where the Petitioner was compulsorily retired with effect from 19th April 1997. Before a Division Bench, it was submitted that the Petitioner was willing to retire voluntarily from 22nd April 1997. The learned Advocate General, who had appeared for the Respondents, had left it to the Division Bench to pass appropriate orders. It is seen that the Division Bench has entertained the request and has substituted the order of compulsory retirement with that of voluntary retirement.

8. In the facts of the present case, it is seen that immediately on being served with the order of compulsory retirement, the Petitioner had applied for voluntary retirement and had applied for review of the decision of the Respondents. We are of the view that the Respondents could have and ought to have considered the request which would have met the ends of justice in the facts and circumstances of the case.

9. In the circumstances, we dispose of this Petition by directing the Respondents to convert the order of compulsory retirement into that of voluntary retirement which is the prayer clause (c) of the Civil Application. Mr.Bapat has submitted that the period between the year 1996 until the actual date of retirement of the Petitioner be considered for the purposes of pensionary benefits and also that the increments which the Petitioner would have earned during this period be considered for the purposes of calculating the pensionary benefits. We are not inclined to entertain these prayers inasmuch as the Petitioner had applied for voluntary retirement immediately on having been served with the order of compulsory retirement by making the Review Application. It is that prayer which is being entertained and in the circumstances, these two submissions cannot be accepted.

10. Mr.Bapat has lastly submitted that in the event of voluntary retirement being granted, the Petitioner may be permitted to add five years into his qualified service. This is as per Rule 66A read with Rule 53 of the Maharashtra Civil Services (Pension) Rules, 1982. This is something which is normally available to every Government servant who voluntarily retires after completing

20 years of service. The Petitioner fulfils this criteria and, therefore, if his request for voluntary retirement is granted, he will also be eligible to this benefit under Rule 66A read with Rule 53 of the Maharashtra Civil Services (Pension) Rules, 1982.

11. The Petition and the Civil Application both stand allowed and disposed of with the above order. The Respondents will take the necessary follow-up action immediately. There will be no order as to costs.

__ _____**(H.L. GOKHALE, J.)**

(SMT.NISHITA MHATRE, J.)